

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS NUMBER: 03-0155  
Gross Income Tax  
For the Years 1997- 2000**

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**ISSUE**

**I. Gross Income Tax-Imposition**

**Authority:** IC 6-8.1-5-1(b), IC 6-2.1-2-2(a)(2), IC 6-2.1-3-3, 45 IAC 1.1-3-3(d)(6).

The taxpayer protests the imposition of gross income tax on the income from certain sales.

**STATEMENT OF FACTS**

The taxpayer is an international corporation that manufactures over six thousand (6000) products. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional gross income tax, interest, and penalty. The taxpayer protested the assessment of gross income tax on certain sales. A hearing was held on this issue. This Letter of Findings results.

**I. Gross Income Tax-Imposition**

**DISCUSSION**

All tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. IC 6-8.1-5-1.

The taxpayer sells a chemical product to an Indiana manufacturer. The product is produced and shipped from the taxpayer's out of state plant. The taxpayer has a dedicated fleet of railcars that run between the taxpayer's manufacturing plant to the Indiana buyer's plant. At any given time, roughly 15-20 railcars are in transit to the Indiana buyer and 10-15 are returning to the manufacturing plant. The inventory remains in the rail car in Indiana for an average of two days before being delivered to the buyer. The contract states that "... title and risk of loss for all product sold hereunder shall pass to Buyer upon delivery of Product to Buyer's plant. . ." The product is not delivered to the plant until it is removed from the rail car. The taxpayer bills the customer twice monthly. The buyer is required to pay for the product on a net cash basis within 30 days from the date on which title to each shipment of the product passes from the taxpayer to the buyer.

Indiana imposes a gross income tax on "the taxable gross income derived from activities or businesses or any other sources within Indiana by a taxpayer who is not a resident or a domiciliary of Indiana." IC 6-2.1-2-2(a)(2). Pursuant to this statute, the department assessed

gross income tax on the taxpayer's receipts from the sale of the product to the Indiana manufacturing concern. The taxpayer protested this assessment.

The taxpayer argued that previous audits did not impose gross income tax on the proceeds from these sales of product pursuant to the interstate commerce exemption found at IC 6-2.1-3-3 as follows:

Gross income derived from business conducted in commerce between the state of Indiana and either another state or a foreign country is exempt from gross income tax to the extent the state of Indiana is prohibited from taxing that gross income by the United States Constitution.

The taxpayer argued that the transactions in this audit period were essentially the same as the exempt transactions from the previous audits. The only change was the provision stating that title to the property changes when the property is delivered to the manufacturing plant in Indiana. Since this change was instituted merely to accommodate the need for the buyer to show productivity improvement, the taxpayer considers it inconsequential. The taxpayer errs in this conclusion. No matter the reason for the change in contractual terms, the contract during the audit period clearly stated that the taxpayer owned the property until such time as it was unloaded at the buyer's facility. The buyer pays a pre-determined price for the product it receives at its manufacturing plant in Indiana.

The term "sale" is defined in BLACK'S LAW DICTIONARY, page 1337, (6<sup>th</sup> Edition, 1990.) as follows:

. . . Transfer of property for a fixed price in money or its equivalent. A contract between two parties, called, respectively, the "seller" (or vendor) and the "buyer" (or purchaser), by which the former, in consideration of the payment or promise of payment of a certain price in money, transfers to the latter the title and the possession of property. . . .

Since the revision of the contract, the taxpayer manufactures product in another state, ships the product to Indiana, stores the product in Indiana and then transfers title and possession of the product for a certain price to the purchaser in Indiana. This is a sale that takes place in Indiana. This is the exact situation described as subject to the Indiana gross income tax at 45 IAC 1.1-3-3(d)(6).

The taxpayer cited an unpublished Indiana Tax Court Case in support of its argument. Since the case is unpublished, it cannot be used as precedent by other taxpayers.

### **FINDING**

The taxpayer's protest is denied.